

**Anne C. Beles Bar No. 200276**

1 Kaiser Plaza, Suite 2300  
Oakland, California 94612  
Tel No. (510) 836-0100  
Fax. No. (510) 832-3690

Attorney for *Defendant Jose Alonza*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

United States of America,

*Plaintiff,*

vs.

JOSE ALONZO HERRERA

*Defendant.*

No. CR 18-0299-03 SI

DEFENDANT'S SENTENCING MEMORANDUM

Date: January 13, 2020

Time: 11:00 a.m.

**I. Introduction**

Jose Alonzo Herrera pleaded guilty to Counts 1 and 2 of the Superceding Indictment on July 12, 2019 pursuant to a written Plea Agreement pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure. Defendant Herrera agreed that a reasonable sentence under the United States Sentencing Guidelines and 18 U.S.C. §3553(a) is 60 months of imprisonment, a 4-year term of supervision, a \$200 special assessment and a fine to be determined by the Court.

Defendant Herrera agrees with the Presentence Report's Guidelines calculation and the Advisory Guidelines range. Defendant Herrera further agrees with the PSR that he is eligible for the Safety Valve (under the new First Step Act), and that the factors under §3553(a) merit a downward

1 variance. Defendant Herrera thus requests 60 months imprisonment.

## 2 **II. Eligibility for the Safety Valve**

3 The offenses to which Defendant Herrera carry a 10-year mandatory minimum. However,  
4 Defendant Herrera is eligible for the Safety Valve under the First Step Act, and its attendant changes.

5 Herrera is technically a Criminal History II, under the USSG. This accounts for a single  
6 Driving Under the Influence conviction in Alameda County in September 2016. For that, Mr. Herrera  
7 was put on a three-year court probation. Under USSG §4A1.1(c), one point is counted for the DUI,  
8 and an additional two points are added for being on probation (USSG §4A1.1(d)).

9 As accurately stated in the PSR, the First Step Act altered the requirements to meet the Safety  
10 Valve exception to the mandatory minimum. Under 18 U.S.C 3553(f), offenders with up to four  
11 criminal history points are now eligible. Mr. Herrera has a total of 3 criminal history points and meets  
12 all of the other criteria. Therefore, he is eligible for a Safety Valve sentence of less than ten years.

## 13 **III. 18 U.S.C. §3553(a) Factors**

14 Defendant Herrera acknowledges the seriousness of the offenses, the deterrence factor and the  
15 need to protect the public from drug offenses.

16 Defendant Herrera emphasizes “the history and characteristics” of himself, not as an excuse  
17 for his offenses, but as factors that warrant a downward variance to the recommended sentence of 60  
18 months imprisonment.

19 Herrera was born in Durango City, Mexico and was raised there by his mother in poverty until  
20 age 9. He then moved to the United States and first met his father. He lived in the Tenderloin and  
21 Mission neighborhoods of San Francisco since his arrival in the U.S. Once in the U.S., Herrera grew  
22 up with an alcoholic and abusive father. Mr. Herrera, in fact, took on the role of “head of household”  
23  
24  
25  
26  
27  
28

1 because of his father's absence. Herrera seemed set upon being the supporter (financial and  
2 emotional) of his family from a young age.

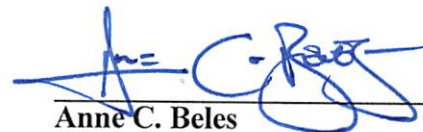
3  
4 As evidenced by his work history, Mr. Herrera always worked. He worked construction and  
5 scaffolding throughout his life. At this, Herrera succeeded.

6 However, Mr. Herrera is an alcoholic and a user of cocaine.<sup>1</sup> He has been unable to silence  
7 that demon, despite repeated attempts at recovery. As this Court well knows from the custodial change  
8 in this case, Mr. Herrera still struggled with relapse during the pendency of this case, despite the  
9 upcoming birth of his child. He is very much interested in substance abuse treatment while  
10 imprisoned.

11 Mr. Herrera also anticipates being deported to Mexico after his period of imprisonment.

#### 12 **IV. Conclusion**

13 It is for these reasons that Mr. Herrera respectfully requests that this Court impose a sentence  
14 of 60 months in prison, to be followed by four years of supervised release and a \$200 special  
15 assessment. We agree with the Government that "[s]uch a sentence is sufficient, but not greater than  
16 necessary, to achieve the goals of sentencing."  
17

18  
19 

20 **Anne C. Beles**  
21 Attorney for Defendant Jose Alonzo Herrera

22  
23  
24 <sup>1</sup> Counsel mentioned one correction to the probation officer in an informal conversation that did not make it to the  
25 final report. Mr. Herrera regularly used cocaine along with his excessive alcohol use, but recalls using  
26 methamphetamine only three times. It is of little consequence, but Herrera wanted to be clear on this.  
27  
28